



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:020. UST Systems: Design, Construction, Installation and Registration.

6 [~~Performance standards for new UST systems.~~]

7 RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart B, Part 281, 42 U.S.C.

8 6991c

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart

10 B, Part 281, 42 U.S.C. 6991c

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the

12 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~

13 ~~Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and

14 control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the

15 cabinet to regulate underground storage tank (UST) systems by requiring registration

16 [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping,

17 release reporting, corrective action, closure, financial responsibility, and other standards to

18 protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a

19 regulatory program that implements federal requirements for UST systems. This chapter

20 identifies requirements for UST systems. This administrative regulation establishes requirements

1 concerning performance standards, registration [~~notification~~], and alternatives for
2 upgrading existing UST systems.

3 Section 1. Adoption of Federal Regulations. (1) The requirements concerning
4 performance standards, registration [~~notification~~], and alternatives for upgrading UST systems
5 are governed by 40 CFR Part 280, Subpart B [~~(1994)~~].

6 (2) 40 CFR 280.22(b) allows for state forms to be used in lieu of federal forms for
7 registration [~~notification~~] of UST systems. The "UST Facility Registration Form", DEP 7112
8 (January 2006) [~~document~~] incorporated by reference in Section 8 [~~Section 2~~] of this
9 administrative regulation shall be used in meeting the requirements of this administrative
10 regulation, 40 CFR 280 Subpart B and 401 KAR 42:200.

11 Section 2. New Registrations. The current owner of a UST system shall notify the cabinet
12 of the existence of the UST system by completing the "UST Facility Registration Form", DEP
13 7112 (January 2006). This form shall be submitted to the cabinet no later than thirty (30) days
14 after installation of the UST system, and shall be signed by the owner and operator of the UST
15 system.

16 Section 3. Amended Registrations. (1) The owner or operator shall submit an amended
17 "UST Facility Registration Form", DEP 7112 (January 2006), that specifically indicates all
18 amendments, within thirty (30) days of any change to the following items:

19 (a) Owner or operator of the UST system;

20 (b) Description of the UST system; or

21 (c) Financial responsibility.

1 (2) If an unregistered UST system is discovered during permanent closure activities
2 pursuant to 401 KAR 42:070, an amended "UST Facility Registration Form", DEP 7112
3 (January 2006) shall be submitted to the cabinet to register the newly discovered UST system.

4 Section 4. Changes of Ownership. (1) If ownership of a UST system changes, the new
5 owner shall complete and submit an amended "UST Facility Registration Form", DEP 7112
6 (January 2006) to indicate the new ownership. The form shall include the previously assigned
7 agency interest number and shall be submitted to the cabinet within thirty (30) days after the
8 transaction.

9 (2) If an owner sells a UST system, the seller shall advise the new owner of the obligation
10 to submit an amended "UST Facility Registration Form", DEP 7112 (January 2006) to the
11 cabinet that indicates the change in ownership. Also, the seller shall submit to the cabinet, within
12 thirty (30) days after the transaction, a copy of the properly executed deed or other mutually
13 executed legal document supporting the sale of the UST system, along with a letter indicating the
14 UST facility name as registered with the cabinet, the UST facility location, and the agency
15 interest number.

16 Section 5. Issuance of a Certificate of Registration and Reimbursement Eligibility.
17 Upon a determination by the cabinet that the "UST Facility Registration Form", DEP 7112
18 (January 2006) is complete and accurate the cabinet shall issue a "Certificate of Registration and
19 Reimbursement Eligibility", DEP 7113 (January 2006). Upon acceptance of the completed form,
20 the cabinet shall assign an agency interest number and shall notify the owner, in writing, of the
21 agency interest number.

1 Section 6. Interior Lining Inspection. (1) The interior lining of a UST system shall be
2 inspected ten (10) years after installation of the UST system. Follow-up inspections shall occur
3 on five (5) year intervals.

4 (2) The “Interior Lining Inspection Form”, DEP 8050 (January 2006), incorporated by
5 reference in Section 8 of this administrative regulation, shall be completed when an inspection is
6 conducted and submitted to the cabinet within thirty (30) days of the inspection.

7 Section 7. [Section 2.] Incorporation by Reference. (1) The following documents are
8 incorporated by reference: [document is hereby incorporated by reference: “Notification for
9 Underground Storage Tank System Form”, DEP Form 5024 (July 1995).]

10 (a) “UST Facility Registration Form”, DEP 7112 (January 2006);

11 (b) “Certificate of Registration and Reimbursement Eligibility”, DEP 7113 (January
12 2006);

13 (c) “Interior Lining Inspection Form”, DEP 8050 (January 2006).

14 (2) The documents referenced in this section are [document referenced in subsection (1)
15 of this section is] available for inspection and copying, subject to copyright law, at the
16 Underground Storage Tank Branch [of the Division of Waste Management], 81 C. Michael
17 Davenport Blvd [14 Reilly Road], Frankfort, Kentucky 40601, (502) 564-5981 [(502) 564-6716],
18 from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays and may
19 also be obtained on the Division of Waste Management’s web page located at
20 www.waste.ky.gov.

401 KAR 42:020 is approved for filing.

\$-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:020

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading existing UST systems.

(b) The necessity of this administrative regulation: This administrative regulation establishes the performance standards, notifications, and alternatives for upgrading existing UST systems that an owner or operator must follow.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides performance standards that are consistent with standards established by the Environmental Protection Agency. The regulations of 401 KAR Chapter 42 are needed to implement the Underground Storage Tank Program established in KRS 224.60.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will indicate to the regulated public the performance standards, notification requirements and alternatives for upgrading existing UST systems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update forms and procedures regarding the notification of UST systems, technical data and the interior lining of UST systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the program to reflect current practices and the forms associated with those requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes do not specifically speak to how the cabinet shall establish performance standards or how the cabinet will issue notifications. Therefore, this administrative regulation attempts to specify this material by adopting federal regulations that governs this subject matter.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will allow the regulated public to understand the performance

standards and notification requirements they are to follow when owning or operating an underground storage tank system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The above groups will not be significantly impacted by the amendments in this regulation. The federal regulations that are adopted in Section 1 are not changing. The registration form (DEP7112) was updated, and will require less information from the owners. This was accomplished by coordinating with the State Fire Marshall's office and their program requirements. This amendment will prevent the duplicative efforts between the two agency's, lessen the burden on owners and administration of the UST program. The affect will be an overall benefit.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost associated with implementation of this regulation.

(b) On a continuing basis: There will be no additional costs associated with regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the collection of annual tank fees of \$30.00 per tank. However, there will be no additional funds needed as a result of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:020

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impact from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:020**

I. This administrative regulation incorporates by reference the "UST Facility Registration Form", DEP 7112 (January 2006). This document is used to register new underground storage tanks or changes to an existing underground storage tank system.

This document consists of 7 pages.

II. This administrative regulation incorporates by reference the "Certificate of Registration and Reimbursement Eligibility", DEP 7113 (January 2006). This document is a certificate issued by the cabinet to owners or operators of underground storage tanks. This certificate signifies that the owner or operator has demonstrated financial assurance.

This document consists of 1 page.

III. This administrative regulation incorporates by reference the "Interior Lining Inspection Form", DEP 8050 (January 2006). This document is used when the cabinet requires inspection of an underground storage tank's interior lining. This fulfills the federal requirements for interior lining inspections.

This document consists of 2 pages.